

REMARKS

Claims 1-16 are the pending claims. In the Office Action, Claims 1 and 3 were provisionally rejected based on a judicially created doctrine of nonstatutory obviousness-type double patenting (“ODP”) as being unpatentable over Claim 1 of co-pending U.S. Patent Publication No. 2006/0234761 A1, which corresponds to application serial number 10/534,143 (referred to herein as the “‘143 appl.”);¹ Claim 2 was provisionally rejected based on a judicially created doctrine of nonstatutory ODP as being unpatentable over Claim 2 of the ‘143 appl.; Claims 4 and 6 were provisionally rejected based on a judicially created doctrine of nonstatutory ODP as being unpatentable over Claim 3 of the ‘143 appl.; Claim 5 was provisionally rejected based on a judicially created doctrine of nonstatutory ODP as being unpatentable over Claim 4 of the ‘143 appl.; Claims 9-16 have been allowed; and allowable subject matter was found in Claims 7 and 8.

Claims 1 and 4 are the rejected independent claims. In regard to Claim 1, the recitation of “an antenna section for receiving the added signal from the adder and radiating the received added signal into the air” in the instant application is patentably distinct from the recitation “an antenna for receiving the frequency-converted addition signal and radiating the corresponding signal in the air” of cited Claim 1 of the ‘143 appl.

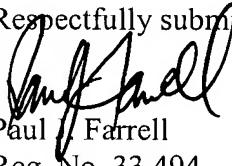
In regard to the provisional ODP rejection of Claims 1-6, it must be considered that the present application was filed on September 9, 2003. In contrast, the ‘143 appl. was subsequently filed on November 21, 2003. Since the ‘143 application is the later-filed application, the ODP rejection should be withdrawn, in accordance with the instruction provided by MPEP 804.I.B(1):

“If ‘provisional’ ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer.”

PATENT APPLICATION
Attorney Docket No: 678-1253 (P10875)

Accordingly, the ODP rejection should be withdrawn and this application should proceed to allowance. Any concerns regarding potential double patenting can be addressed during prosecution of the later-filed '143 application.

The application as now presented, containing claims 1-16, are believed to be in condition for allowance. Should the Examiner feel that a telephone conference or personal interview would facilitate resolution of any remaining matter, the Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,

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The '143 appl. awaits examination at the U.S. Patent and Trademark Office.